

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF NEW YORK**

In re:

The Roman Catholic Diocese of Ogdensburg,
New York,

Case No.:
Chapter 11 Case

Debtor,

**DECLARATION OF REV. KEVIN J. O'BRIEN
REGARDING STRUCTURE AND PRE-FILING HISTORY OF
THE ROMAN CATHOLIC DIOCESE OF OGDENSBURG, NEW YORK
AND IN SUPPORT OF THE CHAPTER 11 PETITION
AND FIRST DAY PLEADINGS**

Pursuant to 28 U.S.C. § 1746, Reverend Kevin J. O'Brien hereby declares and states as follows:

1. I am the Moderator of the Curia of the Roman Catholic Diocese of Ogdensburg. I have served in such capacity since June, 2012. In my prior roles with the Roman Catholic Diocese of Ogdensburg, I have served as a parochial vicar, administrator and pastor in several parishes within the territory of the Diocese of Ogdensburg. I am familiar with the mission, history and structure of the Diocese of Ogdensburg.

2. The Roman Catholic Diocese of Ogdensburg, New York (the “Diocese”) is a religious corporation organized pursuant to a special act of the New York Legislature as described in paragraph 20 below. The Diocese is the secular legal embodiment of the Roman Catholic Diocese of Ogdensburg, a juridic person recognized under Canon Law (as that term is defined below).

3. On July 17, 2023 (the “Petition Date”), the Diocese intends to file a voluntary petition commencing the above-captioned case (this “Chapter 11 Case”) under chapter 11 of Title 11 of the United States Code (11 U.S.C. 101 et seq.; the “Bankruptcy Code”).

4. I am authorized to submit this Declaration on behalf of the Diocese in connection with its voluntary chapter 11 petition and the first-day motions and applications filed with the Court contemporaneously herewith (the “First Day Motions”).

5. I make this Declaration based upon my personal knowledge of the facts set forth herein, upon information supplied to me by others associated with the Diocese, upon my review of relevant documents and upon my experience and knowledge of Diocesan operations. If I were called to testify, I would testify accordingly to the facts set forth herein.

6. The First Day Motions seek relief aimed at facilitating a smooth transition into this Chapter 11 Case, assisting the Diocese in continuing its mission by maintaining employee compensation, maintaining the goodwill and morale of the employees, parishioners, clerics and others who rely on the programs and services provided by the Diocese, and preserving and maintaining the property available to satisfy creditors of the Diocese. I respectfully submit that all of the First Day Motions are vital to the Diocese’s reorganization efforts and expedited approval of the First Day Motions is important to the Diocese’s successful reorganization. The First Day Motions and financial structure of the Diocese are further described in the First Day Declaration of Mark Mashaw, Diocesan Fiscal Officer, submitted contemporaneously herewith.

CANON LAW STRUCTURE AND ORGANIZATION

7. It is a matter of faith that the Catholic Church (the “Church”)¹ was founded by Jesus Christ to carry out the mission to teach, sanctify and serve the needs of others. The Church is a worldwide community with over 1.2 billion members who adhere to a common creed. The *Code of Canon Law*² establishes the internal organizational structure and procedures to be followed within the Church. Canon Law also identifies property rights and agency relationships among the various structures within the community of the Church.

8. While the Church is organized in a hierarchical structure it is not a monolithic corporate entity. A variety of organizations operate in ecclesiastical harmony to carry out the mission of the Church. The Church is organized by territorial districts, the most common of which is a diocese.³ A diocese usually is defined by a geographic area and is created to serve the community of Latin Rite Catholics present in that area. The bishop of a diocese is appointed by The Pope.⁴

9. The Most Reverend Terry R. LaValley was ordained and installed as the Bishop of the Diocese on April 30, 2010.

10. The territory of the Diocese includes the counties of Jefferson, Lewis, St. Lawrence, Franklin, Clinton, Essex and the Northern portions of Hamilton and Herkimer in New York State.

¹ As used herein, “Church” means the universal Catholic Church (i.e., the “one, holy, catholic and apostolic church” of Catholic belief, seated in the Vatican and headed by Pope Francis). For the avoidance of doubt, particular places of worship are referred to herein as “churches” without capitalization.

² Canon Law comes from several sources of Church law that together establish the internal organizational structure and relationships among the entities and organizations that comprise the Church. Canon Law was originally codified in 1917, and amended by Pope John Paul II on January 25, 1983. See, 1983 Code of Canon Law c.1-1752 (1983) (“Canon Law”).

³ Canon Law, c. 369

⁴ *Id.* at c. 377 §1

11. The Diocese maintains a number of administrative offices and ministries, necessary to advance the mission of teaching, sanctifying and serving. These offices and ministries include the Bishop's Office, Chancery, Marriage Tribunal & Canonical Affairs, Fiscal Office, Informational Technology, Human Resources, Development Office, Bishop's Fund Office, Communications Office, Evangelization, Faith Formation Office, Education Department, Ecumenism, Insurance Office, Worship Office, Data Processing Center, Vocations Office, Formation for Ministry, Young Adult Ministry, Family Life Office, Youth Ministry, Safe Environment Office, Campus Ministry, Victims Assistance, Vicar for Clergy, and Deacon Formation.

12. Within the territory of a diocese are separately constituted parishes.⁵ Like a diocese, a parish usually is defined territorially.⁶

13. "Juridic persons" are constituted pursuant to Canon Law or by a special grant of competent authority given through a decree, and they have perpetual existence unless extinguished in accordance with Canon Law. Juridic persons within the Church are either aggregates of persons or things, ordered for a purpose which is in keeping with the mission of the Church. Similar to the civil law concept of a corporation, a juridic person is distinct and separate from any natural person, and from other juridic persons. A "public" juridic person is a type of juridic person that fulfills its purposes in the name of the Church. Dioceses and parishes are considered separate public juridic persons.⁷

14. Each public juridic person "owns" all property it has acquired. A juridic person possesses property in order to carry out its mission to teach, sanctify and serve. These purposes

⁵ *Id.* at c. 374

⁶ *Id.* at c. 515

⁷ Juridic personality is articulated in the 1983 Code in canons 113-123.

are broadly defined as the conduct of worship, the support of employees and ministers, and the works of the apostolate.⁸ Canon Law requires the ownership of property to be protected by valid means under secular civil law, and permits the formation of secular legal entities, like the Diocese, to hold property and conduct the business of a public juridic person.

15. The administration of property is the responsibility of a public juridic person's administrator,⁹ such as a diocesan bishop over the property of a diocese or a pastor over the property of a parish. The administrator of the property of a public juridic person must exercise this responsibility in concert with a finance council.¹⁰ It is a fundamental canonical understanding that property owned by one public juridic person cannot be simultaneously owned or controlled by another.

16. The persons who populate a diocese or a parish are first of all those who are baptized and live in communion with the successor of St. Peter (The Pope, otherwise known as the Supreme Pontiff of the Roman Catholic Church) and those in communion with him.¹¹ Among the baptized are laypersons and clerics.¹² Clerics are also called sacred ministers and perform many of the liturgical services within the worship of the Church. Clerics are deacons, priests or bishops. There are other individuals who contribute to the mission of the Church by joining together through common life and the profession of the evangelical counsels of poverty, chastity, and obedience

⁸ 1983 Code c.1254. The works of the apostolate include activities associated with easing human suffering, promoting the general welfare, and advancing the social mission of the Church: feeding the hungry, clothing the naked, welcoming the stranger, caring for the sick, offering education, and any other activity that can promote the good of an individual and society.

⁹ *Id.* at c.1279 § 1.

¹⁰ *Id.* at c.1280.

¹¹ *Id.* at c. 204.

¹² *Id.* at c. 207 § 1.

(“Religious”).¹³ Religious may be either laypersons or clerics. If a Religious is not a cleric, that person is referred to as a sister or brother.

17. While there are a variety of forms by which Religious are organized in institutes of consecrated life, they are most often referred to as religious orders.¹⁴ These institutes, formed around the charism of a founder recognized by appropriate ecclesiastical authority, enjoy a certain level of autonomy and conduct their internal operations independently of any diocese (or other juridic persons). This is most commonly seen in the conduct of their proper apostolates; such as schools, healthcare, and monastic communities. Each institute of consecrated life is its own independent public juridic person. They are bound to the Church in a special way, but they are not part of the hierarchical constitution of the Church. Members of an institute of consecrated life are not subject to the supervision or discipline of the bishop of the diocese wherein they reside, unless they are employed in service of a parish, school or other institution that is subject to a bishop’s oversight.

18. Communities of Men Religious that are present in the Diocese are the Franciscan Friars of the Atonement and Missionaries of the Sacred Heart.

19. There are several Communities of Women Religious in the Diocese, including the Sisters of St. Joseph, Sisters of Mercy, Sisters of the Cross of Chavanod, Servants of Mary, Sisters of the Blessed Virgin Mary, Franciscan Sisters of the Atonement, Daughters of Charity of the Sacred Heart of Jesus, Dominican Sisters of Hope, Sisters of Charity of St. Louis, and Sister Adorers of the Precious Blood.

¹³ *Id.* at c. 207 § 2.

¹⁴ Institutes of Consecrated Life are covered in canons 573-746 of the 1983 Code.

NEW YORK CORPORATE STRUCTURE

A. The Diocese

20. Under New York Law, the Diocese is an incorporated legal entity formed pursuant to a Special Legislative Act with its own corporate structure and governance, separate from the other Catholic entities within its territory that are described in parts “B” and “C” below (the “Other Catholic Entities”). The Other Catholic Entities (a) are not under the fiscal or operating control of the Diocese, (b) maintain their own books, records, bank accounts and employee payroll, and (c) are not debtors in this chapter 11 proceeding and have not otherwise sought bankruptcy relief.

21. The juridic person of the Diocese of Ogdensburg was canonically established on February 11, 1872. Thereafter, on January 20, 1891 a corporation was formed to constitute the Diocese of Ogdensburg under New York law. The Diocese as it exists today was reincorporated on April 10, 1945 by a special act of the New York State Legislature (Chapter 704 of the Laws of 1945 (the “Special Act”)). The Special Act provides that the three trustees of the Diocese are the Bishop, the Vicar General and the Chancellor as required under Canon Law.

22. As noted above, the diocese serves all or portions of eight (8) counties in Northern New York. There are currently 81 parishes (each “Parish” or collectively “Parishes”) and approximately 71,905 Catholic individuals in the territory of the Diocese. These individuals are served by 46 Diocesan priests, 10 priests who are Religious who reside in the Diocese, and 96 permanent deacons. Permanent deacons are men ordained for the ministry of the Word (Catechesis and preaching), service to the poor and liturgical assistance. Permanent deacons may preside at baptisms, officiate at marriages, and provide for the funeral rites apart from the celebration of the Eucharist. The Diocese currently employs approximately 58 individuals, which includes both clergy and laity.

23. There are no Diocesan-operated schools within the Diocese.

B. The Parishes

24. The secular legal embodiments of the parishes within the Diocese are non-member corporations (“Parish Corporations”) formed under New York’s Religious Corporation Law. Pursuant to Article 5 of the Religious Corporations Law, each of the Parish Corporations is governed by a Board of Trustees comprised of the Bishop, the Vicar General of the Diocese, the Pastor of the Parish and two lay members of the Parish. The Bishop of the Diocese is the president of each Parish Corporation, the Vicar General is the vice president and the Pastor is the secretary-treasurer (all serving *ex-officio* in accordance with New York law).

25. Each Parish Corporation owns the real and personal property that is used in its ministry. Each Parish holds its own meetings, appoints its own councils and committees, and establishes its own annual budget.

26. In 2022, throughout the 81 parishes in the Diocese there were 110 marriages, 439 infant baptisms, 624 First Communions and 525 Confirmations.

27. Within the Diocese, Parish Corporations own and operate 7 Catholic schools serving approximately 1,143 students. Numerous Parish Corporations own, control, maintain and operate cemeteries.

C. Catholic Ministry Entities

28. There are several not-for-profit corporations that work to carry out various ministries of the Church within the territory of the Diocese (“Catholic Ministry Entities”). All of the Catholic Ministry Entities were created under the New York Not-for-Profit Corporation Law, New York Education Law or other New York organizational statutes to carry out a variety of works of the apostolate. The Catholic Ministry Entities include the following:

i. Catholic Charities

29. Catholic Charities of the Diocese of Ogdensburg ("Catholic Charities") was incorporated under the name "Catholic Charities Aid Association of Ogdensburg" on October 24, 1957. The certificate of incorporation was amended June 11, 1959 to change the name to "Catholic Charities of the Diocese of Ogdensburg". The purpose of Catholic Charities is to aid, support, advise and conduct by itself or in cooperation with any religious, charitable, benevolent, or educational corporation a wide variety of human services for the benefit of persons within the Diocese. Catholic Charities has twelve regional and specialty agencies, including; Seaway House, Franklin County Retired Senior Volunteer Program, Foster Grandparents Program, Clinton County Retired Senior Volunteer Program, Port Henry Retired Senior Volunteer Program, and Justice and Law Center.

30. Catholic Charities is a not-for-profit New York corporation with members. The members include (all serving *ex-officio*): the Bishop of the Diocese, the Vicar General of the Diocese, Chancellor of the Diocese and the Director of Catholic Charities.

31. The affairs, property, business and policies of Catholic Charities are under the charge, control and direction of the Board of Trustees, subject to certain reserved powers of the Members.

32. Catholic Charities provides assistance to people in need without regard to religious, racial, ethnic or economic background.

ii. Wadhams Hall

33. Wadhams Hall was incorporated pursuant to the Education Law of the State of New York on February 25, 1949 (provisional charter), which was made absolute on June 24, 1966, and was amended on October 21, 1988. The purpose of Wadhams Hall was to conduct a four year

program in liberal arts leading to a Bachelors of Arts degree, and to prepare and educate men and women for other ministries in the Church as well as prepare and educate men of all ages for the priesthood and Diaconate in the Church.

34. Wadham's Hall is governed by a Board of Trustees comprised of not less than five nor more than ten persons, which includes the Bishop of the Diocese and the President of Wadham's Hall (serving ex officio).

35. Wadham's Hall owns and operates a school of ministry. Students prepare for work in ministry in the permanent diaconate and lay ministry at Wadham's Hall. Wadham's Hall offers courses for certificate programs for catechists and youth ministers. Courses are provided through various modes of delivery, including on-line and video conferencing.

iii. The Foundation

36. The Foundation of the Roman Catholic Diocese of Ogdensburg, New York, Inc. (the "Foundation") was incorporated under the Not-for-Profit Corporation Law of the State of New York on March 15, 2007. The Purposes of the Foundation are to solicit and receive contributions and establish, maintain and operate an endowment fund for the charitable purpose of providing support to and for the sole and exclusive benefit of the Roman Catholic Diocese of Ogdensburg, New York, and its affiliated and related parishes and corporations, departments, institutions, organizations, entities and programs within the geographic areas comprising the Diocese, to support the mission of the Diocese, to preserve and further vocations to the priesthood within the diocese, to preserve and further vocations to the diaconate and lay ministry, to preserve Catholic education in the Diocese by financially assisting Catholic schools, religious education programs and other Catechetical education programs or institutions, to receive and administer funds for

charitable purposes, to invest, reinvest or deal with the principal and income therefrom, to promote the purposes of the Church.

37. The Foundation offers assistance to the Diocese, parishes within the Diocese and other programs and activities by providing a vehicle for endowing programs and ministries of these entities.

38. The affairs, property, business and policies of the Foundation are under the direction of a Board of Directors, comprised of not less than three nor more than seven members, including the Diocesan Bishop or Administrator, Vicar General, and Diocesan Fiscal Officer who serve *ex officio*.

39. The purpose of the Retreat House is to provide an environment and opportunities for spiritual, personal and professional growth, healing and peace.

iv. The Mission Societies

40. The Pontifical Mission Societies of the Diocese of Ogdensburg, New York, Inc. (“Mission Societies”) was incorporated under the New York State Not-For-Profit Corporation Law on February 27, 2012. The purpose of the Mission Societies is to promote and extend the Catholic Religion throughout the world, to propagate the faith and doctrines, principles and practices of the Roman Catholic Church and the issuing and publication of pamphlets, written articles and literature relating thereto, to assist in the support and maintenance of the expenses of missions and missionaries of the Church, especially in the State of New York; to receive Mass stipends for transmission to clergymen to discharge the obligation thereof; to take and hold, either absolutely or in trust for any of its purposes, any property, real or personal, without limitation as to amount or value, to sell, mortgage, lease or otherwise convey or transfer such property, and to invest and

reinvest any principle and income, and to deal with, use, apply and expend any property and income derived therefrom in such manner as will best promote its objectives.

REASONS FOR BANKRUPTCY

41. The Diocese does not seek to shirk or avoid responsibility for any past misconduct by clergy or for any acts or omissions of the Diocese relating to such misconduct. The Diocese does not seek bankruptcy relief to hide the truth or deny any person a day in court. In fact, the Diocese is committed to pursuing the truth and has never prohibited any person from telling his/her story or speaking his/her truth in public. The Diocese has publicly disclosed known perpetrators. The Diocese has made and requires criminal referrals to be made for all credible allegations of sexual abuse. Bishop LaValley has acknowledged past shortcomings by the Diocese and has attempted to offer aid and comfort to abuse victims. The Diocese has established standards for the training and background assessment of all employees, clerics and volunteers who will likely interact with children and young people.

42. The Diocese is a religious corporation with limited resources, including limited insurance coverage which may be applicable to claims of persons seeking remedies under the New York Child Victims Act (“CVA”). The Diocese acknowledges its moral obligation to compensate victims of abuse fairly and equitably. Consistent with this moral obligation, it cannot allow any single plaintiff to recover a disproportionate share of the limited funds available from the Diocese simply because the plaintiff’s case goes to trial first. Similarly, the Diocese cannot ignore the valid claims of other creditors who stand on equal footing with the CVA claimants as general unsecured creditors of the Diocese.

43. Beyond its obligation to creditors, the Diocese has a fundamental and moral obligation to the Catholic faithful it serves, and to the donors who have entrusted the Diocese with

the material fruits of their lives' labor, to continue the ministries of the Church in fulfillment of the canonical and secular legal purposes of the Diocese. In order to do this, the Diocese must survive.

44. The Diocese is currently named as a defendant in 124 lawsuits brought pursuant to the CVA. Handling this volume of lawsuits at one time is proving to be burdensome and impractical. Each case requires a determination of the merits, resolution of insurance issues, and extensive discovery disclosures and procedures. Resolution of these lawsuits would take an extensive period of time and sizeable legal and professional costs. Chapter 11 provides a forum in which these matters can be resolved in a timely and organized manner that is fairer to the victims and the Diocese.

45. The Diocese has commenced this Chapter 11 Case (a) to maximize its assets (including any available insurance assets) in order to provide the greatest recovery for the greatest number of abuse victims; (b) to provide an orderly claims administration process that will ensure fairness in distribution and avoid the inherent inequities in the proverbial "race to the courthouse" that would otherwise result in the most aggressive litigants depleting the Diocese's assets at the expense of other claimants; and (c) to achieve certainty with respect to the Diocese's unliquidated and contingent liabilities in a manner that will allow the Diocese to reorganize and continue to fulfil its charitable, humanitarian and religious mission in service of the Catholic faith.

46. A swift exit from bankruptcy is of the utmost importance given the Diocese's limited resources and because it is a not-for-profit religious corporation. The Diocese is dependent upon the charity of its faithful to sustain its very existence. This Chapter 11 Case may cast a shadow upon the Diocese, the Parish Corporations, and the various Other Catholic Entities and

their numerous ministries. I respectfully submit that the best way to alleviate any of these concerns is to emerge from chapter 11 as soon as possible.

Pursuant to 28 U.S.C. § 1746, I swear under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information and belief.

Dated: July 14, 2023

Rev. Kevin J. O'Brien

Reverend Kevin J. O'Brien
Moderator of the Curia of the Roman Catholic Diocese of Ogdensburg, New York